IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 2492 of 2004

in

SPECIAL CIVIL APPLICATIONNo 15387 of 2004

With

CIVIL APPLICATION NO.9327 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI SOMABHAI LATA

Versus

SUPERINTENDENT OF POLICE

Appearance:

1. LETTERS PATENT APPEAL No. 2492 of 2004

MR JB PARDIWALA for Appellant No.

NOTICE SERVED BY DS for Respondent No. 1,5

..... for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 08/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant - petitioner is an Adivasi coming from a very poor family belonging to Schedule Tribe. At a very young age, he was appointed as an Armed Police Constable by an order dated 17.03.1999 and sent for training to Police Training School on 22.03.1999. He was discharged from service by the Superintendent of Police, Dahod - respondent no.1 by his impugned order dated 25.05.1999 (Annexure `A') on the ground that while taking training in Issue (D) - 166 batch, he remained absent without any valid reasons from 04.05.1999 to 15.05.1999 for a period of about 11 days which was a serious misconduct. After he was served with an impugned order of discharge on the same day i.e. 26.05.1999, by a letter dated 25.10.2002 (Annexure `B') addressed to the respondent no.2 D.G.P. and I.G.P. Gujarat State, Gandhinagar, the appellant requested to take him back in service and sent for training because he was coming from poor Adivasi family and only earning member in his family. He has also stated in his letter Annexure `B' that at the time of training, all of a sudden he fell sick, therefore, without being aware of rules and without informing his officer, he left and remained absent from duty for that period. In support of his case, he had also annexed the medical certificate showing that he was sick during that period. However, by an order dated 19.04.2003 Annexure `C', Special I.G.P., Vadodara Range, Vadodara informed the appellant-petitioner that without any valid reason, he remained absent from duty for a period of about 11 days from 4th to 15th May, 1999 and thereby committed serious misconduct, therefore, he was rightly discharged from service by the Police Superintendent, Dahod and that his request to take him back in service cannot be granted.

After receiving the aforesaid order at Annexure `C' dated 19.04.2003 once again the appellant-petitioner submitted the appeal under Rule - 9 of Bombay Police (Punishment and Appeal) Rules, 1956 to the Dy.Inspector General of Police, Gujarat State against his impugned

order of termination dated 26.05.1999 on the ground that he had valid reasons for remaining absent from his duty and without affording him any opportunity of hearing, his services were terminated on the ground that he has committed serious misconduct. In his appeal, he had prayed for reinstatement with continuity in service and all consequential benefits (Annexure `D'). It is to be noted that his appeal was dismissed by an order dated 04.11.2004 (Annexure `E') only on the ground that arbitrarily he remained absent from duty while on training, therefore, he was rightly discharged from service by the Police Superintendent, Dahod. As a last resort, the appellant - petitioner approached this court by way of special civil application no. 15387 of 2004 which was dismissed by the learned single Judge of this court on 30.11.2004 only on the ground of delay and laches without going into the merits of the case as according to him, though the termination order was passed on 26.05.1999, for the first time the appellant petitioner had made the representation only in the month of October, 2002 and after rejection of his representation, he has approached this court only in 2004. The said order is challenged in this appeal.

#. When this matter was placed before us for admission, the learned counsel Shri Pardiwala for the appellant petitioner, relying on the judgment of the Constitutional Bench of the Hon'ble Supreme Court in the case of Ramchandra Shankar Deodhar and others V/s The State of Maharashtra and others, reported in AIR 1974 SC 259, had submitted that the learned single Judge ought to have exercised his discretion in favour of the appellant petitioner on the peculiar facts and circumstances of the case, as, the appellant - petitioner is coming from Schedule Tribe of Adivasis and he was the only earning member of his family. It was also submitted by Mr.Pardiwala that only once the appellant - petitioner remained absent from duty for 11 days i.e. from 4th to 15th May, 1999 and he reported on 16.05.1999 and thereafter he was allowed to resume his duty on 16.05.1999 and all of a sudden without giving him any opportunity of hearing, straightaway he was discharged from service by an impugned order dated 26.05.1999. Mr.Pardiwala had also submitted that the appellant petitioner wanted only reinstatement in service and he would not be claiming any back wages if he is reinstated in service. In view of his submission made at the bar by Mr.Pardiwala, the notice was ordered to be issued making it returnable today i.e. on 08.12.2004 to show cause as to why this appeal should not be disposed of at the admission stage itself. Learned A.G.P. Shri Dave was

also directed to accept notice for the concerned respondents and also to take necessary instructions in the matter from the respondent no.1 - Police Superintendent, Dahod as to whether he is ready and willing to take the appellant back in service without giving back wages with continuity of service or not ? Accordingly today, learned A.G.P. Shri Dave, on instruction, from respondent no.1, stated at the bar that he would not be in a position to make any statement regarding taking back the appellant petitioner in service without back wages but with continuity in service. But he has left it to the Court's discretion for passing appropriate order in the matter in view of the peculiar facts of the case.

#. So far no formal order of admission is passed, therefore, this appeal is admitted. Mr.Dave, learned A.G.P. waives service for the respondents and it is heard and disposed of finally by this order.

#. Mr.Pardiwala learned counsel for the appellant original petitioner submitted that his case is not only identical to the case of Shri Dilipbhai Shaligram Patil whose Letters Patent Appeal No.2475 of 2004 is allowed today by this court, but his case is rather more strong. He submitted that in addition to the grounds mentioned by this court in the judgment delivered in Letters Patent Appeal no. 2475 of 2003, the case of the appellant petitioner should be viewed leniently by this court because he is coming from poor Adivasi family and that he is the only earning member of his family. He submitted that in case of Shri Dilipbhai Shaligram Patil whose Letters Patent Appeal no. 2475 of 2004 was allowed by this court, he had committed seven misconducts of repeatedly remaining absent, in spite of it, his special civil application no. 13406 of 2003 was admitted and by speaking order, mandatory interim relief of reinstatement in service was granted whereas the allegation against the present appellant - petitioner is that only once he remained absent from duty and that too only for a period of 11 days. He submitted that he fell all of a sudden sick at the time of training, therefore, being novice and not aware of about any rules or regulations, he proceeded on leave and as soon as he recovered, he submitted his joining report on 16.05.1999 and in fact he was also allowed to resume duty by his superior and worked till 26.05.1999, the day on which he was served with the order of discharge. He also submitted that in the instant case, the Police Superintendent, Dahod had not passed order of discharge on his own which is clear from the impugned order of discharge at Annexure `A' and that he

was directed by his Superior Officer, D.I.G. and Principal of Police Training School, Vadodara to terminate his services by his order dated 15.05.1999 and, therefore, respondent no.1 - Police Superintendent, Dahod without giving any opportunity of hearing passed the order of discharge and terminated his services. Learned A.G.P. Shri Dave has produced on record, copy of the order dated 15.05.1999 passed by the D.I.G. and Principal of Police Training School, Vadodara. It shows that the appellant petitioner remained absent from 04.05.1999 till he passed the order on 15.05.1999, therefore, he directed the Police Superintendent, Dahod to take immediate action in the matter. Accordingly, the Police Superintendent, Dahod straightaway passed the order on 26.05.99 without being aware of the fact that the appellant - petitioner already resumed his duty on 16.05.1999 by producing medical certificate. Mr.Pardiwala further submitted that his representation and appeal were turned down by the respondent - authorities by their impugned orders at Annexure `C' and `E' which clearly show that they treated the absence of 11 days of the appellant petitioner as a serious misconduct.

#. He submitted that if reasonable opportunity of hearing was given by issuing notice by the disciplinary authority, then he would have immediately pointed out that he was sick, therefore, he remained absent from duty only on 11 days and on his own he straightaway, returned on duty on 16.05.1999 with the medical certificate and that he was allowed to resume his training on 16.05.99 and continued in service till 26.05.1999, the day on which the impugned order of termination was passed. Thus, according to him, it was an order of termination by way of punishment without holding inquiry and it was not an order of termination simpliciter. He also submitted that though in his appeal dated 27.10.2004 (Annexure `D'), he has specifically asked for an opportunity of personal hearing but without affording any opportunity of personal hearing, his appeal was dismissed by the appellate authority by an impugned order Annexure `E'. He, therefore, submitted that on all these counts, his appeal and writ petition are required to be accepted.

#. Learned A.G.P. Shri Dave appeared in Letters Patent Appeal no. 2475 of 2004 filed by Shri Dilipbhai Shaligram Patil whose appeal is allowed today itself by this court, was hardly in a position to defend the order and, in fact, as stated earlier, respondent no.1 had also left it to the court for passing appropriate order in the matter in view of the averments made in the writ petition

as well as in this appeal and more particularly the prayer made by the appellant petitioner to reinstate him in service without back wags till the order of reinstatement is passed with continuity in service with consequential benefits.

#. For the reasons recorded in Letters Patent Appeal no. 2475 of 2004, this appeal is also required to be allowed and the impugned order of discharge and further orders at Anenxure `C' and `E' passed by the authorities on his representation and appeal are required to be quashed and set aside. Shri Dilipbhai Shaligram Patel was belonging to upper class whose letters patent appeal was allowed by us today. In his case, there were in all seven lapses out of which i.e. on four different occasions, he remained absent and in spite of it, by a mandatory order passed by the learned single Judge in the writ petition, he was reinstated in service and in fact thereafter he has served for 12 years without remaining absent from duty, whereas in the instant case, the appellant belongs to poor Adivasi family and he is the only earning member of appellant belongs to poor Adivasi family and he is the only earning member of his family. Only once and that too for a brief period of 11 days, he remained absent for the valid reason as he was sick and on his own straightaway he resumed his duty as soon as he recovered from his illness and that he was allowed to work till 26.05.1999, the day on which the impugned order of discharge was passed against him. If the appellant petitioner was given at least notice to show cause before passing the impugned order of termination, then he would have immediately pointed out to the authority that he was sick and therefore he remained absent and as soon as he recovered from the sickness by producing medical certificate, he was allowed to resume duty. Thus, the impugned order of discharge from service also suffers from vice of violation of principles of natural justice. Once the veil is lifted, it is clear that it was not an order of discharge simpliciter but it was an order of punishment without holding inquiry which cannot be sustained. However, learned A.G.P. Shri Dave was right in submitting that there was delay on the part of the appellant petitioner in approaching this Court, therefore, he should not be given any back wages till the order of reinstatement is passed. In fact, Mr.Pardiwala had earlier made submission that if the order of reinstatement is passed by the other side, then he will not claim the back wages. It is a different matter that respondent No.1 - Authority is not willing to pass an order of reinstatement in service on his own but he has frankly left it to the Court for passing an appropriate

order. Therefore, though the matter is required to be allowed by this Court. Mr.Pardiwala also agreed to let go the back wages for all this period provided the appellant - petitioner is reinstated in service by the respondent at the earliest preferably by 31.01.2005. At this stage, Mr.Dave makes it clear that on his reinstatement the appellant - petitioner has to undergo the training. It goes without saying that the appellant - petitioner has to first complete the training on his reinstatement in service.

8. In view of the above, we are also of the clear opinion that the learned Single Judge clearly erred in dismissing the writ petition of the appellant petitioner at the admission stage only on the ground of delay and laches. In view of the judgment of the Constitutional bench of the Hon'ble Supreme Court in case of Ramchandra Shankar Deodhar (Supra), we are of the clear opinion that on peculiar facts and circumstances of the case, the learned Single Judge ought to have exercised his jurisdiction in favour of the appellant petitioner by accepting the writ petition and set aside the impugned order of discharge and subsequent orders passed by the respondent Authority at Annexure : 'C' and 'E' dismissing his representation and Appeal.

9. In view of the above discussion, this appeal is allowed and the order dated 30.11.2004 passed by the learned Single Judge is hereby quashed and set aside and Special Civil Application No.15387 of 2004 of the appellant petitioner is accepted by setting aside the impugned order dated 26.05.1999 (Annexure : A) passed by the respondent No.1 - Superintendent of Police, District Dahod. The Respondent No.1 is directed to reinstate the appellant petitioner in service as if the impugned order dated 26.05.1999 (Annexure : A) of discharge from services was never passed against him with continuity in service giving him all consequential benefits of services except the back wages latest by 31.01.2005. In view of the reasonable stand taken by the respondent NO.1, there shall be no order as to costs in this Appeal.

10. Civil Application is disposed of as the main Appeal is allowed.

Direct service is permitted. Copy of this order be given to learned A.G.P. Shri Dave for the respondents for its immediate implementation.

(B.J.Shethna, J.)

(Sharad D.Dave, J.)

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